IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6101 OF 2002

Swami Swarupanand Seva Mandal .. Petitioner

Versus

M.Y.Bhat and Ors. .. Respondents

Mr.A.A.Kumbhakoni for petitioner

Mr.G.S.Godbole for respondent Nos. 1, 2, 4 and 5

Mr.M.H.Solkar, A.G.P. for respondent No.6.

CORAM : S.C.DHARMADHIKARI, J.

DATE : DECEMBER 16, 2004.

P.C.

. Heard Mr.Kumbhakoni, learned Counsel for petitioner and Mr.Godbole, learned Counsel for respondent Nos. 1 to 5, and Mr.Solkar, learned

A.G.P. for respondent No.6.

2. This petition under Article 227 of the Constitution impugns an order passed by Joint Charity Commissioner, Kolhapur on 21st September 2001. The operative part of the impugned order reads thus:-

> "Accordingly in continuation of said ad-interim ex parte order executive committee of Swami Swarupanand Seva Mandal, Pavas, Dist.Ratnagiri hereby further restrained by interim orders from holding general body meeting of the trust on 23.9.2001 at Pune or at any other place till the final disposal of inquiry application No.33/2001 in exercise of the powers conferred on this authority under section 41-A of the B.P.T. Act, 1950."

3. Mr.Kumbhakoni, learned Counsel appearing

for petitioner submits that the constitution of Trust does not in any manner restrict venue of the Annual General Meeting. He submits that on a plain reading of clause 6.1 of the constitution, it is clear that the Annual General Meeting can be held at any place in accordance with the decision of the Managing Committee. Mr.Godbole, on the other hand contends that a true and proper construction of the said clause together with other sub-clauses would make it abundantly clear that the Trustees are not prevented from holding Annual General Meeting at Pavas where properties of the Trust are situated. He submits that it is only because the Trustees did not want to hold A.G.M. at Pavas that prompted them to apply to the Joint Charity Commissioner, invoking his jurisdiction under section 41A of the B.P.T. Act, 1950.

4. It is not disputed before me that main application being 33/2001 under section 41-A is

pending before Joint Charity Commissioner, Kolhapur. The order in question is an ad-interim order. That order came to be pronounced because of the apprehension of the applicant before Joint Charity Commissioner that the Trustees would proceed with the meeting of General body scheduled on 23rd September 2001 at Pune. In my view, the order therefore should be held as being restricted to the meeting of 23rd September 2001. Further a direction that the said meeting cannot be held at any other place till final disposal of the enquiry application would, prima faie, appear to be widely worded and ought not to have been issued in the light of pendency of the main application by the Joint Charity Commissioner.

5. Be that as it may, interest of justice would be served if application No.33/2001 is heard expeditiously. Needless to observe that within the time frame stipulated by me, if the application is not heard or even during the

pendency of the same, if the applicants have apprehension of any A.G.M. being held by the Trustees, it would be open for them to apply and if such an application is made, the Joint Charity Commissioner shall decide the same uninfluenced by the observations made in the impugned order and on its own merits in accordance with law.

6. The Joint Charity Commissioner is, therefore, directed to decide the application No.33/2001 by end of February 2005. Parties to appear before the Joint Charity Commissioner on 4th January 2005. The Joint Charity Commissioner as well as parties to act on an authenticated copy of this order. All contentions on merits of the controversy of both sides are expressly kept open.

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